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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-257

T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE,
Petitioner,

vs.

GENERAL ELECTRIC CREDIT CORPORATION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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GENERAL ELECTRIC CREDIT CORPORATION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this case on June 2, 1971.

OPINION BELOW

The opinion of the Court of Appeals is not yet reported. It is set forth in the appendix, as are the order of remand and the order denying rehearing.

JURISDICTION

The judgment of the Court of Appeals was rendered on June 2, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS RAISED

1. Where the case was removed from State Court to the U. S. Court by the U. S. Government (which was a third party lien claimant and cross plaintiff) and all parties consented to trial in the U. S. Court which proceeded to judgment on the merits in favor of Petitioner, should the case be remanded if it appears that the statute on which removal was based was not applicable, notwithstanding the fact that there is diversity, the suit was brought under the U. S. anti-trust statutes, and involved an agency of the U. S. Government?

2. Assuming the U. S. Government improperly removed the case, should the judgment on the merits in the U. S. Court fall and the case be remanded for retrial in the State Court, even though the suit (1) involves the U. S. anti-trust statutes, (2) involves a claim of tortious interference with the government's lien, (3) there is complete diversity, and (4) all parties consented to trial on the merits in the U. S. Court?

3. Does the U. S. Court have removal jurisdiction in a case where the U. S. Government is a defendant and cross plaintiff, even though the government does not bring itself within the provisions of a specific statute authorizing removal?

STATEMENT

1. Proceedings in the Trial Court.

This suit was for debt brought in State Court by General Electric Credit Corporation against T. R. Grubbs. Grubbs cross actioned against General Electric Credit Corporation and brought in General Electric Company asking damages under the federal and state anti-trust statutes, because of the destruction of his business by G.E.C.C. and G.E. in conspiracy. Grubbs then brought in the U. S. Government as a defendant, along with other parties claiming liens against him, in order to determine the priority of the liens. The U. S. Government cross actioned against G.E.C.C. and G.E. claiming tortious interference by them with its judgment lien against Grubbs, and violation of the anti-trust statutes, and the government removed the case to the U. S. Court. No party objected to removal. All parties pleaded in federal court, consented to the court's jurisdiction, and requested the court to proceed to trial on the merits. The trial resulted in Grubbs' recovery of $20,000.00 damages against G.E.C.C. for destruction of his business. G.E. was absolved. The U. S. Government was denied relief. The record showed that there was diversity (G.E.C.C. and G.E. being New York corporations and Grubbs being a resident of Texas), that the federal anti-trust statutes were involved, and that the U. S. Government was a defendant and cross plaintiff in the case.

2. Proceedings in the Court of Appeals.

The Court of Appeals raised the question of improper removal sua sponte. No party complained of it or urged it on appeal. The Court of Appeals required supplemental briefs on the subject of jurisdiction. These were filed and Petitioner pointed out in his brief the several different

grounds of jufisdiction in the U. S. Court other than the government's stated grounds for removal. The Court of Appeals held that 28 U.S.C. 1444 did not apply and remanded the case to the State Court. The Court of Appeals stated in its opinion that there was "no allegation of diversity or federal question", *although Petitioner repeatedly called their existence to the Court's attention* in his brief and petition for rehearing. The petition for rehearing was denied.

REASON FOR GRANTING THE WRIT

1. This case merits review by this Court on certiorari because the decision of the Court of Appeals is in direct conflict with the holdings of the Supreme Court in (1) *Baggs* v. *Martin*, (Sup. Ct.) 179 U.S. 106, 21 S. Ct. 109, 45 L. Ed. 155, (2) *John C. McKay* v. *Uinta Development Company*, (Sup. Ct.) 57 L. Ed. 1138, and *In re Albert Moore*, 52 L. Ed. 904, as well as numerous decisions of the other Courts of Appeal.

2. This case merits review by this Court on certiorari because the decision of the Court of Appeals, which deprives Petitioner Grubbs of his judgment for damages because of the error of the U. S. Government, is such an unjust decision as to be a substantial departure from the accepted and usual course of judicial proceedings and to call for the supervision of this Court.

3. This case merits review by this Court on certiorari because this Court needs to settle the question whether or not the mere involvement of the U. S. Government in a suit authorizes the removal of that suit to federal court, even though the facts of the case may not come within some specific removal statute.

ARGUMENT

I.

This Honorable Court has clearly answered the first "question for review" in the negative. It is settled by this Court's decisions that even though removal may have been imperfect or erroneous, still if the U. S. Court could have jurisdiction on other grounds such as diversity or federal question, and particularly if all parties consent to trial in the U. S. Court, the case should not be remanded to the State Court. We have that exact situation here, and the Court of Appeals decision to remand is in direct conflict with this Honorable Court's holdings in *Baggs* v. *Martin,* (Sup. Ct.) 179 U.S. 206, 21 S. Ct. 109, 45 L. Ed. 155, *John C. McKay* v. *Uinta Development Company,* (Sup. Ct.) 57 L. Ed. 1138, and *In re Albert Moore,* 52 L. Ed. 904, as well as numerous cases decided by the other Courts of Appeal. As stated by the Supreme Court in the *Moore* case, supra:

> "That the defendant consented to accept the jurisdiction of the United States court is obvious. . . . After the removal the plaintiff, instead of challenging the jurisdiction of the United States Court by a motion to remand, filed an amended petition in that court, signed a stipulation giving time to the defendant to answer, and then both parties entered into successive stipulations for a continuance of the trial in that court. Thereby the plaintiff consented to accept the jurisdiction of the United States Court, and was willing that his controversy with the defendant should be settled by a trial in that court. The mere filing of an amended petition was an appeal to that court for a trial upon the facts averred by him, as they might be controverted by the defendant. And this, as we have seen was followed by repeated recognitions of the jurisdiction of that court."

To the same effect is *Trayler* v. *Black, Sivalls & Bryson,* (CCA 8th) 189 F.2d 213, where the Court said:

> "Whether the procedure for removal actually pursued was statutorily allowable at the time it was followed may reasonably be doubted. However, the action was clearly removable. Title 28 U.S.C.A. 1332 (a) (1) and 1441 (a). And the failure to question, and the actual approval by the parties of, the procedure taken to achieve removal are sufficient to waive any 'modal and formal' infirmities in that procedure."

It may be said here, as it was in the above case that, "whether the procedure for removal was statutorily allowable or not may be doubted", but nevertheless, there was diversity and there was the cause of action involving the U. S. anti-trust laws, where federal jurisdiction is specifically granted by statute, and all parties voluntarily accepted the jurisdiction. Clearly, the U. S. Court's decision should stand, rather than requiring a long and expensive retrial in State Court.

As stated in *Lopata* v. *Handler,* (CCA 10th) 121 F.2d 939,

> "Where a suit is one of which a federal court may take jurisdiction, that is, a case which the plaintiff might properly bring in a federal court, and the defendant procures its removal from a state court, *although such removal is wholly unauthorized,* and the plaintiff acquiesces in such removal, the federal court acquires jurisdiction."

See also *Handley Mack Co.* v. *Godchaux Sugar Co.,* (CCA 6th) 2 F.2d 435, where it is said:

> ". . . jurisdiction will be retained where, as here, although the case *was not technically removable* under the statute, the court yet had jurisdiction over the subject-matter of the controversy, and the parties had fully consented to the federal jurisdiction and acted thereunder."

Petitioner pointed out in his supplemental brief that there were four different grounds for jurisdiction in the U. S. Court, any one of which made the case removable. They were: (1) diversity of citizenship, 28 U.S.C. 1332; (2) suits involving liens of the United States, 28 U.S.C. 2410; (3) federal question. See 28 U.S.C. 1331 and *U. S.* v. *Lee,* (Sup. Ct.) 106 U.S. 196, 27 L. Ed. 171; and (4) suits involving the U. S. anti-trust statutes, 15 U.S.C. 15, 15 U.S.C. 1. Section 1 specifically provides for jurisdiction when any person "shall be injured in his business or property by reason of anything forbidden in the anti-trust laws." This is exactly what was claimed in our case. It was held in *Knuth* v. *Erie Crawford Dairy Co.*, 395 F.2d 420, that where the complaint supported a federal claim based on violations of Title 15 U.S.C., pendent jurisdiction could be exercised over claims that the defendants violated state law by fraudulent conversion of plaintiff's money and by tortious interference with plaintiff's business. The cases of *Washington Prof. Basketball Corp.* v. *NBA*, 147 F. Supp. 154 and *Southside Theaters* v. *United West Coast Theater Co.*, 178 F.2d 648 are also authority on this point.

This doctrine is also enunciated in the Supreme Court case of *Baggs* v. *Martin*, 179 U.S. 206, 21 S. Ct. 109, 45 L. Ed. 155. Judge Baker's comment in *Toledo, St. Louis & Western Ry. Co.* v. *Perenchio*, 105 F. 472 seems to sum up the holdings as approved by this Honorable Court:

> ". . . within its limitations respecting subject matter, a federal court is a court of general jurisdiction. If organic power to hear the controversy exists, *it is immaterial when or how the parties get into court;* it is enough if they do come in and waive all the preliminaries to the submission of the controversy."

II.

The order to remand creates a serious injustice against the Petitioner Grubbs, because it allows what the Court of Appeals said was a mistake of law by the government, a third party which recovered nothing and suffered no liability, to undo a long and thorough trial on the merits and to destroy a well deserved recovery of damages by Grubbs.

This result, if allowed to prevail, most assuredly makes the innocent suffer. All parties consented to federal court jurisdiction and a trial on the merits. In a thorough trial, the government recovered nothing and suffered no liability. G.E., G.E.C.C. and T. R. Grubbs all had their positions and claims fully and finally adjudicated on the merits. Now because the government made a mistake of law, as held by the Court of Appeals, all this is to be taken away . . . Grubbs is to lose his recovery which was the culmination of years of work and great expense; the General Electric Company (which was exonerated) now is to be subjected to another trial, possibly leading to liability; and G.E.C.C. is to be put to another long and expensive trial without having an adjudication of its appellate points.

This seems neither correct nor just. If the government was wrong in removing the case, it, and not the rest of us, should suffer for its mistake. Surely, at this late date, all the effort, time and expense which have gone into this case should not go down the drain just because the government may have misinterpreted the law and the rest of us were not so adverse to being in the U. S. Court that we failed to object to the removal.

It is generally the rule that when litigants fail to object, they are bound by what is done. Here, if remand is ordered, the opposite will be true. Parties will be allowed to stand by in silence, and if the trial goes against them,

have another go at it in another forum. Surely this is not right, nor is it conducive to the fair and efficient administration of justice. It goes directly against our traditional concept of a litigant's "day in court".

This Honorable Court made a statement in *In re Moore*, supra, which has great significance here:

> "We have made these many quotations and references, not simply to establish the doctrine itself, *but to emphasize the widespread injurious results which may be expected to follow from now enforcing a different rule*; for if . . . an objection to the jurisdiction of a particular one of those courts cannot be waived and no consent can give jurisdiction, it is clear that many judgments have been rendered by those courts in reliance upon such a waiver, which will necessarily be held to be absolutely void, *and the litigation must be had over again in some other court, resulting possibly in different decisions through the disappearance of witnesses, the loss of testimony, or the running of the statute of limitations.*"

III.

This case merits review by this Court on certiorari because this Court needs to settle the question whether or not the mere involvement of the U. S. Government in a suit authorizes the removal of that suit to federal court, even though the facts of the case may not come within some specific removal statute.

So far as we can determine, this Court has not completely settled this question. There are cases to the effect that whenever the U. S. Government or its property or one of its agencies is involved in litigation, there is basis for federal jurisdiction and removal. There are other cases which seem to hold that this is not true, and that there is not any basis for federal jurisdiction unless there is a specific statute authorizing jurisdiction which the facts

bring the case within. Yet, a study of the U. S. statutes indicates that it is the intent of Congress to provide for federal jurisdiction in all cases involving the government or its agencies, because there is a statute for nearly every conceivable instance where the U. S. Government or its agencies can be involved. But, what about a case where the government does not bring its fact situation and claims exactly within the coverage of a specific federal statute authorizing jurisdiction? Is there jurisdiction merely because the interests or the property of the U. S. Government are involved?

We submit that the answer is "Yes", but there is a definite need for this Honorable Court to clearly express it.

The case of *U. S.* v. *Lee,* (Sup. Ct.) 106 U.S. 196, 27 L. Ed. 171 held:

> ". . . that *no case can arise in a state court,* where the *interests,* the *property,* the *rights* or the *authority* of the federal government may come in question, which cannot be removed into a Court of the United States under existing laws."

If that case means what it says, then our question must be answered in the affirmative and the Court of Appeals' order to remand is erroneous.

It is well settled that suits by or against federal corporations are removable by the corporation. *Osborn* v. *U. S. Bank,* (Sup. Ct.) 9 Wheat. 738, 6 L. Ed. 204; *Pacific Railroad Removal Cases,* (Sup. Ct.) 5 S. Ct. 1113, 15 U.S. 1, 29 L. Ed. 319; *Perpetual Bldg. & Loan Ass'n* v. *Series Directors of Equitable Bldg. & Loan Ass'n,* (CCA 1954) 217 F.2d 1, cert. den., 75 S. Ct. 599, 349 U.S. 911, 99 L. Ed. 1246. As stated in the *Pacific RR. Removal Cases,* supra:

> ". . . a suit by or against a corporation of the United States is a suit arising under the laws of the United States. . ."

That case cited the exhaustive opinion of Chief Justice Marshall in the *Osborn* case, supra, where, it has been said, the doctrine was settled once and for all.

If a suit against a corporation of the United States, in which the U. S. owns one half or more of the stock, is removable, *why is a case against the government itself not removable?* Particularly where the United States Government is both a defendant and a cross plaintiff seeking damages under the anti-trust laws, and the preservation and validity of its lien (a property right) is brought into question?

It is submitted that such a case is removable. If there is any doubt on this question, this Honorable Court should now settle this doubt.

For the foregoing reasons it is submitted that the petition for certiorari should be granted to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 29961

GENERAL ELECTRIC CREDIT CORPORATION,
Plaintiff-Appellant,

versus

T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE,
Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Texas

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(June 2, 1971)

Before GOLDBERG and DYER*, Circuit Judges, and GROOMS, District Judge.

GOLDBERG, Circuit Judge: A funny thing happened to this case on its way to trial. Through a series of errors all parties ended up in the wrong forum. Finding a complete absence of federal jurisdiction, we remand the case to the district court for remand to the state court from whence it was removed.

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*Judge Dyer did not participate in the decision of this case.

Plaintiff General Electric Credit Corporation instituted this suit in a Texas state court, seeking judgment on a promissory note against defendant T. R. Grubbs. Grubbs by various pleadings asserted a cross-action against General Electric Credit Corporation, and impleaded General Electric Company as an additional defendant. Subsequently, Grubbs filed another petition naming the United States as a party defendant. In this petition Grubbs referred to nine judgments obtained against him, including one in favor of the United States. Alleging that he was in jeopardy because of adverse claims being pressed by the lien claimants and the United States, Grubbs prayed that the priority of the lien claimed by the United States be determined under the provisions of Rule 22, Fed. R. Civ. P., in order to avoid double or multiple liability. The other judgment holders, however, were not made parties to the suit.

The United States, upon being named as a party defendant under Rule 22, filed a petition for removal to the United States District Court for the Eastern District of Texas. Removal was granted, apparently under the provisions of 28 U.S.C.A. § 1444, which provides:

> "§ 1444. Foreclosure action against United States
>
> Any action brought under section 2410 of this title against the United States in any State court may be removed by the United States to the district court of the United States for the district and division in which the action is pending."

§ 2410(a) provides:

> "§ 2410. Actions affecting property on which United States has lien
>
> (a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named

a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter—

(1) to quiet title to,

(2) to foreclose a mortgage or other lien upon,

(3) to partition,

(4) to condemn, or

(5) of interpleader or in the nature of interpleader with respect to, real or personal property on which the United States has or claims a mortgage or other lien."

In sum § 2410 waives sovereign immunity and allows the United States to be named a defendant in an interpleader suit with respect to real or personal property on which the United States has or claims a mortgage or other lien, and § 1444 allows the United States to remove the suit to federal court when it is named a defendant in such a suit.

At the conclusion of trial before the district court, judgment was rendered against General Electric Credit Corporation on its suit against Grubbs on the promisssory note, and in favor of Grubbs on his cross claim against General Electric Credit Corporation. General Electric Company and the United States were dismissed from the suit. From this determination General Electric Credit Corporation appeals.

We need not detain ourselves with the merits of this controversy since we must at the outset, and on our own motion, recognize the total absence of federal jurisdiction. We note that there never has been any allegation of diversity of citizenship between the parties to this suit. Nor is there any basis for federal question jurisdiction. The sole ground alleged for federal jurisdiction in the in-

stant case rests on the government's right to remove under § 1444, since it was named a defendant in Grubbs' interpleader suit. We think it clear beyond peradventure, however, that removal jurisdiction based on § 1444 is justified *only* if a *viable interpleader* action is filed naming the United States as a party defendant. In the instant case we think that Grubbs' attempt to join the United States as a defendant under Rule 22 was obviously frivolous.

The interpleader rule, Rule 22, Fed. R. Civ. P., provides:

> "Interpleader
>
> (1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20."

The requirement that the plaintiff "is or may be exposed to double or multiple liability" has always been interpreted to demand a showing that the plaintiff has been or may be subjected to adverse claims to a particular fund. *See* 3A J. Moore, Federal Practice ¶ 22.02. In the more common case the requisite adversity is provided when the stakeholder is faced with two or more claims which are mutually inconsistent; a decision in favor of one claimant necessarily requires a determination that the

other claimants are not entitled to any part of the fund. As the Supreme Court explained in *Texas* v. *Florida*, 1939, 306 U.S. 398, 406, 412, 59 S.Ct. 563, 83 L.Ed. 817, 825, 828:

> "The peculiarity of the strict bill of interpleader was that the plaintiff asserted no interest in the debt or fund, the amount of which he placed at the disposal of the court and asked that the rival claimants be required to settle in the equity suit the ownership of the claim among themselves. But as the sole ground for equitable relief is the danger of injury because of the risk of multiple suits when the liability is single, Farley v. Blood, 30 N. H. 354, 361; Bedell v. Hoffman, 2 Paige, 199, 200; Mohawk & H. River R. Co. v. Clute, 4 Paige, 384, 392; Atkinson v. Manks, 1 Cow. 691, 703; Story, Eq. Pl. 10th ed. §§ 291, 292, and as plaintiffs who are not mere stakeholders may be exposed to that risk, equity extended its jurisdiction to such cases by the bill in the nature of interpleader. The essential of the bill in the nature of interpleader is that it calls upon the court to exercise its jurisdiction to guard against the risks of loss from the prosecution in independent suits of rival claims where the plaintiff himself claims an interest in the property or fund which is subjected to the risk. The object and ground of the jurisdiction are to guard against the consequent depletion of the fund at the expense of the plaintiff's interest in it and to protect him and the other parties to the suit from the jeopardy resulting from the prosecution of numerous demands, to only one of which the fund is subject. While in point of law or fact only one party is entitled to succeed, there is danger that recovery may be allowed in more than one suit. Equity avoids the danger by requiring the rival claimants to litigate before it the decisive issue, and will not withhold its aid where the plaintiff's interest is either not denied or he does not assert any claim adverse to that of the other parties, other than the single claim, determination of which is decisive of the rights of all. Pacific Nat. Bank v. Mixter, 124 U. S. 721, 31 L. ed. 567, 8 S. Ct. 718; Provident Sav.

Life Assur. Soc. v. Loeb (C. C.) 115 F. 357; Sherman Nat. Bank v. Shubert Theatrical Co. (D. C.), 238 F. 225, affirmed in (C. C. A. 2d) 247 F. 256; Illingworth v. Rowe, 52 N. J. Eq. 360, 28 A. 456; Carter v. Cryer, 68 N. J. Eq. 24, 59 A. 233; 2 Story, Eq. Jur. 14th ed. § 1140; Story, Eq. Pl. 10th ed. § 297b; Chafee, Cases on Eq. Rem. 75 et seq.; 3 Daniell, Ch. Pl. & Pr. 6th Am. ed. 1572; Maclennan, Interpleader, 338 et seq. supra.

* * *

In the case of bills of peace, bills of interpleader and bills in the nature of interpleader, the gist of the relief sought is the avoidance of the burden of unnecessary litigation or the risk of loss by the establishment of multiple liability when only a single obligation is owing. These risks are avoided by adjudication in a single litigation binding on the parties."

Interpleader has more reecntly been allowed in a second situation where the claims against the plaintiff are not technically inconsistent in the sense noted above. In this situation the plaintiff stakeholder is allowed the benefits of interpleader if he has a strictly limited liability and the claims asserted, although not mutually exclusive, are in excess of the limited liability. In this situation the claims are adverse in the sense that as a practical matter all claims cannot be satisfied from the limited fund. *See, e.g., State Farm Fire & Casualty Co.* v. *Tashire*, 1967, 386 U.S. 523, 87 S.Ct. 1199, 18 L.Ed.2d 270.

Clearly, unless the plaintiff can demonstrate that he has been or may be subjected to claims adverse in either of the above respects, then he has failed to meet the requirements of the interpleader rule and the action must be dismissed. *Fulton* v. *Kaiser Steel Corp.*, 5 Cir. 1968, 397 F.2d 580; *duPont & Co.* v. *O'Keefe*, 7 Cir. 1966, 365 F.2d 141; *Bierman* v. *Marcus*, 3 Cir. 1957, 246 F.2d 200; *New York Life Ins. Co.* v. *Valz*, 5 Cir. 1944, 141 F.2d 1014. In the in-

stant case Grubbs satisfied neither standard. It is patently obvious that we do not have a situation where the party seeking interpleader relief is exposed to multiple liability on one obligation due to inconsistent claims. The cross-plaintiff Grubbs has not even asserted that he is not liable individually to each of the judgment holders, including the United States. Indeed, the record indicates that he very probably is liable to each of the judgment holders. Grubbs cannot, therefore, claim the benefits of Rule 22 interpleader to avoid multiple liability because he has not shown that in fact he is only singly liable. Nor does Grubbs qualify for the second type of adversity which has been found to justify interpleader relief. He cannot be said to stand in the position of a stakeholder whose strictly limited liability is subjected to claims which aggregately exceed the liability limit. It is apparent from the record that Grubbs, if liable at all, has unlimited liability. He is the primary debtor, not, for example, a surety with limited liability. The most that he could claim is that as a matter of fact his ability to pay is limited. This is an entirely different assertion, and we think it falls short of the requisite adversity necessary to entitle one to interpleader relief. *See Fulton* v. *Kaiser Steel Corp., supra,* at 583, where the court noted that interpleader should be denied if the claims do not exceed the maximum legal liability or if the stakeholder is "not the surety but the contract debtor himself."

We conclude, therefore, that Grubbs has totally failed to bring his case within either of the two situations in which interpleader actions are sanctioned. His suit against the United States should accordingly have been dismissed at the outset.

In this case the failure of Grubbs' interpleader action has more than the usual consequences because the very

jurisdiction of the court depended upon a determination that a viable interpleader action had been asserted. We think it manifest that mere pleading, calling for the joinder of the United States under Rule 22, was insufficient to confer federal jurisdiction under § 1444 if the claim was not one which came within the interpleader rule. *Wallach* v. *Cannon*, 8 Cir. 1966, 357 F.2d 557. As we have demonstrated, the attempted interpleader was entirely without justification under Rule 22.[1] As a result, the United States was never subjected to a viable suit in which property on which it had a lien was in jeopardy as provided in § 2410. Consequently, the district court and this court have no further jurisdiction over this case under the removal provisions of § 1444.

Interpleader is no surrogate for bankruptcy, receivership, and other creditor disputes. We have no present stake, no present holder, and a woefully incomplete conclave of creditors. The United States came on stage when called and moved the scene to a federal forum, but it had no real role in the drama, nor could it have. To premise federal jurisdiction on such a supernumerary position is untenable. The federal blanket just will not stretch that far.

We therefore remand this case to the district court with instructions that the case be remanded to the state court for appropriate disposition.

REMANDED.

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1. Grubbs chose to frame his pleadings in terms of Rule 22 of the Federal Rules of Civil Procedure. The result would be the same if he had used Rule 43 of the Texas Rules of Civil Procedure which was itself derived from Rule 22, Fed. R. Civ. P.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1970

No. 29961

D. C. Docket No. CA 1273
GENERAL ELECTRIC CREDIT CORPORATION,
Plaintiff-Appellant,

versus

T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE,
Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Texas

Before GOLDBERG and DYER*, Circuit Judges, and GROOMS, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of

*Judge Dyer did not participate in the decision of this case.

the said District Court in this cause be, and the same in hereby, remanded.

It is further ordered that plaintiff-appellant be condemned to pay one-half the costs on appeal to be taxed by the Clerk of this Court, and that defendant-appellee, be condemned to pay one-half of said costs.

June 2, 1971

Issued As Mandate: